

AMENDED IN ASSEMBLY JUNE 26, 2003

AMENDED IN SENATE JANUARY 9, 2003

SENATE BILL

No. 3

Introduced by Senator Burton
(Principal coauthor: Senator Vasconcellos)
(Coauthors: Senators Perata, Romero, Scott, and Sher)
(Coauthors: Assembly Members Hancock, Leno, Nation, and
Steinberg)

December 2, 2002

An act to add Section 1376 to the Penal Code, relating to the death penalty.

LEGISLATIVE COUNSEL'S DIGEST

SB 3, as amended, Burton. Death penalty: mental retardation.

Existing law, added by an initiative statute, provides that the penalty for a defendant who is found guilty of murder in the first degree, where special circumstances exist, is death or imprisonment in the state prison for life. In determining the penalty to be imposed, the trier of fact is required to take into account whether, as a result of mental defect, the defendant had the capability to appreciate the criminality of his or her conduct or to conform that conduct to the requirements of the law, if this is relevant. A recent decision of the United States Supreme Court has held that the imposition of the death penalty on a mentally retarded person is prohibited by the *United States* Constitution.

This bill would define the term "mentally retarded" and would provide that a defendant in any case in which the prosecution seeks the death penalty may apply for an order directing that a mental retardation ~~trial~~ hearing be held. This bill would require a court to order a ~~trial~~

hearing, without a jury, to determine whether a defendant is mentally retarded upon submission of a declaration by a qualified expert opining that the defendant is mentally retarded. The bill would specify that the defendant shall present his or her evidence of mental retardation, followed by the prosecution's evidence and any rebuttal evidence, with each party permitted to reopen only as provided. This bill would provide for other specified procedures, and would provide that the ~~prosecution~~ defense shall have the burden of proving ~~beyond a reasonable doubt~~ by a preponderance of the evidence that the defendant is ~~not~~ mentally retarded. It would provide that the penalty for a mentally retarded defendant found guilty of murder in the first degree where special circumstances which would otherwise make him or her eligible for imposition of the death penalty have been found, shall be confinement in the state prison for life without possibility of parole. This bill would also provide that if, after a mental retardation ~~trial~~ hearing, the court ~~or jury~~ finds that the death penalty is not precluded, the criminal trial shall proceed as in any other case in which a sentence of death is sought by the prosecution, and the criminal jury shall not be informed of the prior proceedings or the findings concerning the defendant's claim of mental retardation. Because this bill would place additional duties on prosecutors, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1376 is added to the Penal Code, to read:
- 2 1376. (a) As used in this section, "mentally retarded" means
- 3 the condition currently defined in subdivision (a) of Section
- 4 1001.20.
- 5 (b) (1) In any case in which the prosecution seeks the death
- 6 penalty, the defendant may, at a reasonable time prior to the
- 7 commencement of trial, apply for an order directing that a mental



1 retardation ~~trial~~ *hearing* be conducted. Upon the submission of a
2 declaration by a qualified expert stating his or her opinion that the
3 defendant is mentally retarded, the court shall order a ~~trial~~ *hearing*
4 to determine whether the defendant is mentally retarded. *The court*
5 *shall conduct the hearing without a jury.*

6 (2) The court shall ~~conduct the mental retardation trial before~~
7 ~~a jury unless a jury is waived by the defendant and the prosecution.~~
8 ~~This jury shall~~ decide only the question of the defendant's mental
9 retardation. The defendant shall present evidence in support of the
10 claim that he or she is mentally retarded. The prosecution shall
11 present its case regarding the issue of whether the defendant is
12 mentally retarded. Each party may offer rebuttal evidence. The
13 court, for good cause in furtherance of justice, may permit either
14 party to reopen its case to present evidence in support of or
15 opposition to the claim of retardation.

16 (3) At the close of evidence, the prosecution shall make its final
17 argument, and the defendant shall conclude with his or her final
18 argument. ~~The court shall instruct the jury on all matters of law~~
19 ~~necessary for the rendering of a verdict.~~ The burden of proof shall
20 ~~be on the prosecution to prove beyond a reasonable doubt that the~~
21 ~~defendant is not mentally retarded.~~ *be on the defense to prove by*
22 *a preponderance of the evidence that the defendant is mentally*
23 *retarded. The jury shall return a verdict that either the defendant*
24 *is mentally retarded or the defendant is not mentally retarded. The*
25 *verdict of the jury shall be unanimous.*

26 (c) If the ~~jury, or the court if a jury is waived by the parties,~~
27 *court* finds that the defendant is mentally retarded, the court shall
28 preclude the death penalty and the criminal trial thereafter shall
29 proceed as in any other case in which a sentence of death is not
30 sought by the prosecution. If the defendant is found guilty of
31 murder in the first degree, with a finding that one or more of the
32 special circumstances enumerated in Section 190.2 are true, the
33 court shall sentence the defendant to confinement in the state
34 prison for life without the possibility of parole.

35 (d) If the ~~jury, or the court if a jury is waived by the parties,~~
36 *court* finds that the defendant is not mentally retarded, the trial
37 court shall proceed as in any other case in which a sentence of death
38 is sought by the prosecution. The jury shall not be informed of the
39 prior proceedings or the findings concerning the defendant's claim
40 of mental retardation.

1 SEC. 2. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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